

THE HONORABLE RICARDO S. MARTINEZ

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ISABEL VALENCIA-PEREZ,

Plaintiff, NO. C 08-0920 RSM

v.

PLAINTIFF'S FIRST AMENDED
COMPLAINT FOR DAMAGES

DARYL SCHERMERHORN, in his
individual capacity and "JANE DOE"
SCHERMERHORN, as a marital
community; STEVEN MALPEZZI, in his
individual capacity and "JANE DOE"
MALPEZZI, as a marital community; THE
UNITED STATES OF AMERICA,

Defendants.

INTRODUCTION

Plaintiff Isabel Valencia-Perez files this lawsuit against the United States of America, Daryl Schermerhorn and Steven Malpezzi for violations of his civil rights protected by the Constitution of the United States. As alleged with greater detail below, the Plaintiff claims that Daryl Schermerhorn and Steven Malpezzi, while employed by the United States of America as employees and agents of the United States Department of Homeland Security, Customs and Border Protection, negligently and/or unreasonably

PLAINTIFF'S FIRST AMENDED COMPLAINT
FOR DAMAGES

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1 detained the Plaintiff without reasonable suspicion of criminal activity, arrested him
2 without probable cause, and by the use of excessive force caused harm to Plaintiff.

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4 **I. PARTIES, JURISDICTION AND VENUE**

5 1.1 At all times relevant hereto the Plaintiff, Isabel Valencia-Perez, was a
6 citizen of Mexico, residing in Mount Vernon, Skagit County, State of Washington.

7 1.2 At all times relevant hereto the Defendants, Daryl Schermerhorn and
8 "JANE DOE" Schermerhorn, were husband and wife residing in Whatcom County, State
9 of Washington, constituting a marital community under the laws of the State of
10 Washington and all acts and omissions alleged herein were performed on behalf of and
11 for the benefit of the marital community.
12

13 1.3 At all times relevant hereto the Defendants, Steven Malpezzi and "JANE
14 DOE" Malpezzi, were husband and wife residing in Whatcom County, State of
15 Washington, constituting a marital community under the laws of the State of Washington
16 and all acts and omissions alleged herein were performed on behalf of and for the benefit
17 of the marital community.
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19 1.4 This is a civil action being brought pursuant to *Bivens v. Six Unknown*
20 *Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971), with jurisdiction
21 in this court pursuant to 28 U.S.C. §1331.

22 1.5 Plaintiff's claim against the United States of America is brought pursuant
23 to 28 U.S.C. § 2401(b) and 28 U.S.C. § 1346(b) (1).
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1.6 Venue is proper in the Western District of Washington under 28 U.S.C. §1391(b) because the events giving rise to these claims occurred in this judicial district.

II. STATUS OF DEFENDANTS

2.1 Defendants, Daryl Schermerhorn and Steven Malpezzi, are now and at all times material, were, duly appointed, employed, and acting as law enforcement officials of the United States Department of Homeland Security, Customs and Border Protection.

2.2 Each of the acts of the Defendants was allegedly done by Defendants Daryl Schermerhorn and Steven Malpezzi in their official and individual capacities, under the color and pretense of the statutes, regulations, customs, and usages of the United States of America, and under the authority of their office as law enforcement officials for the United States Department of Homeland Security, Customs and Border Protection.

2.3 Defendant United States of America, employed Defendants Daryl Schermerhorn and Steven Malpezzi at all times relevant herein as United States Customs and Border Protection Agents.

III. FACTS

3.1 On June 12, 2006, at or about 11:15 a.m., the Plaintiff, Mr. Valencia-Perez, was sitting within a grassy area outside of his apartment complex in the 1300 block of North 26th Street in the City of Mount Vernon, Skagit County, State of

1 Washington, while waiting for a school bus to deliver his six year son, Luis, home from
2 kindergarten.

3 3.2 At the time of this incident on June 12, 2006, Defendants Daryl
4 Schermerhorn and Steven Malpezzi were United States Border Patrol Agents who upon
5 information and belief were stationed at the Canada/United States Border in Lynden,
6 Whatcom County, State of Washington.

7
8 3.3 While on a frolic in the City of Mount Vernon Defendants Daryl
9 Schermerhorn and Steven Malpezzi, and while in disregard of their supervisor's orders
10 not to conduct city patrols or to contact suspected aliens found upon the streets, observed
11 Mr. Valencia-Perez, who is of Hispanic decent, sitting within a grass planting strip in the
12 1300 block of North 26th Street in the City of Mount Vernon.

13
14 3.4 Without any reasonable suspicion of criminal activity having occurred or
15 then occurring in their presence, Defendants Daryl Schermerhorn and Steven Malpezzi,
16 who were operating a car with dark tinted windows, and without any official markings or
17 designation as a Border Patrol Vehicle, and while dressed in plain clothes with no visible
18 indication of their official position as law enforcement agents, the defendants initiated
19 physical contact with Mr. Valencia-Perez based solely because of his appearance as a
20 Hispanic.

21
22 3.5 The Plaintiff observed the defendants' unmarked car pull into the
23 apartment parking lot directly behind his position, about 20 feet from him and a large
24 man, believed to be Defendant Daryl Schermerhorn, exited the passenger side of the car
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1 and quickly headed towards Mr.Valencia-Perez. No one else was around Mr.Valencia-
2 Perez at the time.

3 3.6 Defendant Schermerhorn said something as he quickly approached
4 Mr.Valencia-Perez. Mr.Valencia-Perez stood up fearing for his safety. Defendant
5 Schermerhorn then grabbed Mr.Valencia-Perez and placed him into a choke hold.

6 3.7 Mr.Valencia-Perez attempted to turn to free himself from the choke hold,
7 when Defendant Schermerhorn punched Mr.Valencia-Perez with a fist in the face near
8 his left eye. Mr.Valencia-Perez fell to the ground with Defendant Schermerhorn jumping
9 on top of him.
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11 3.8 Defendant Schermerhorn continued to strike Mr.Valencia-Perez about his
12 neck and back area. Mr.Valencia-Perez attempted to pull his jacket over his head to
13 protect himself as Defendant Schermerhorn kept hitting him.
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15 3.9 Another large man with black hair, believed to be Defendant Steven
16 Malpezzi, approached Mr.Valencia-Perez, got on top of him, and pointed a handgun at
17 Mr.Valencia-Perez' head. Defendant Malpezzi was dressed in a polo shirt with blue
18 pants.
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20 3.10 Defendant Malpezzi, in broken Spanish, yelled that he was an immigration
21 agent while on top of Mr.Valencia-Perez.

22 3.11 Defendants Schermerhorn and Malpezzi placed their knees into
23 Mr.Valencia-Perez' back and attempting to use shackles to restrain him the defendants
24 began wrapping the chain around his arms.
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1 3.12 At this point in time, officers from the Mount Vernon Police Department,
2 who were responding to a 911 emergency call, arrived and ordered Defendants
3 Schermerhorn and Malpezzi to cease their actions against Mr.Valencia-Perez. The police
4 officers then transported Mr.Valencia-Perez and the agents to the Mount Vernon Police
5 Department in order to commence an investigation of the defendants actions.

6 3.13 Without any consideration that more than 25 percent of the population of
7 Mount Vernon, Washington, were identified as people of Hispanic decent according to
8 the year 2000 United States Census, Defendants Daryl Schermerhorn and Steven
9 Malpezzi arrested Mr.Valencia-Perez without probable cause and through the use of
10 excessive force.
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12 3.14 Mr.Valencia-Perez sustained serious bodily injury and damages from the
13 Defendants Schermerhorn and Malpezzis' excessive force committed during the unlawful
14 detention and arrest of Mr.Valencia-Perez.
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16 IV. FIRST CAUSE OF ACTION

17 4.1 Plaintiff incorporates herein by this reference paragraphs 1.1 through 3.14
18 above.
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20 4.2 Defendants Daryl Schermerhorn and Steven Malpezzi unreasonably seized
21 the Plaintiff without probable cause or reasonable suspicion of criminal activity, thereby
22 violating his rights under the Fourth Amendment to the Constitution of the United States.
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24 4.3 As a direct and proximate result of the above-described acts of the
25 Defendants, all committed under color of lawful authority, the Plaintiff suffered harm and
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1 damages, all of which is in violation of his rights under the Fourth Amendment to the
2 Constitution of the United States.

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4 **V. SECOND CAUSE OF ACTION**

5 5.1 Plaintiff incorporates herein by this reference paragraphs 1.1 through 4.3
6 above.

7 5.2 Defendants Daryl Schermerhorn and Steven Malpezzi violated the
8 Plaintiff's right to be free from unreasonable search and seizure wherein the defendants
9 through the use of excessive force caused the Plaintiff bodily injury necessitating medical
10 care and treatment for the same, which actions by the defendants violate rights under the
11 Fourth Amendment to the Constitution of the United States.

12 5.3 As a direct and proximate result of the above-described acts of the
13 Defendants, all committed under color of lawful authority, the Plaintiff suffered harm and
14 damages, all of which is in violation of his rights under the Fourth Amendment to the
15 Constitution of the United States.

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18 **VI. THIRD CAUSE OF ACTION**

19 6.1 Plaintiff incorporates herein by this reference paragraphs 1.1 through 5.3
20 above.

21 6.2 Defendants Daryl Schermerhorn and Steven Malpezzi, as employee agents
22 of the United States of America, United States Department of Homeland Security and
23 United States Customs and Border Protection, negligently performed their employment
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1 duties by disobeying their supervisor's orders and unreasonably seizing Plaintiff without
2 probable cause and by the use of excessive force.

3 6.3 Defendant United States of America, is liable as principal for the negligent
4 acts by their employee agents, Defendants Daryl Schermerhorn and Steven Malpezzi.

5 6.4 Plaintiff duly filed a Federal Tort Claim with the Department of Homeland
6 Security which claim was denied on or about April 6, 2009.

7 6.5 As a direct and proximate result of the above-described acts of the
8 Defendants, all committed under color of lawful authority, the Plaintiff suffered harm and
9 damages.
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11 VII. PRAYER FOR RELIEF

12 WHEREFORE, the Plaintiff prays for judgment against the Defendants, and each
13 of them, as follows:
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15 1. An award of special and general damages to Plaintiff against Defendants
16 Daryl Schermerhorn and Steven Malpezzi in an amount to be awarded by the trier of fact;
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18 2. An award of special and general damages to Plaintiff against the
19 Defendant United States of America, in an amount to be awarded by Court;


20 3. An award of punitive damages to Plaintiff against Defendants Daryl
21 Schermerhorn and Steven Malpezzi;

22 4. An award of the Plaintiff costs and disbursements pursuant to all
23 applicable statutory authority including but not limited to 28 U.S.C. § 1921.
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1 5. Such other and further relief as the Court may deem just and equitable.

2 DATED this 18th day of September, 2009.

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4 DAVIES PEARSON, P.C.

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7 Of Attorneys for Plaintiff
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